



Purchase Order Terms and Conditions

The following terms and conditions shall apply to the purchase by Total Safety U.S., Inc. ("Buyer") of goods or services described in the Purchase Order. Buyer does not accept and expressly rejects any different or additional terms in any acknowledgment, invoice or other form or communication other than those contained in the Purchase Order and these Purchase Order Terms and Conditions ("Order") in a written contract signed by both Buyer and Vendor covering such goods or services. If there is no such written contract, Buyer will purchase such goods and/or services only upon the following terms and conditions. Vendor's acceptance of this Order, shipment or delivery of such goods, or provision of such services, shall constitute consent to these terms and conditions:

1. **Delivery.** Delivery of the goods or services will be in accordance with the instructions (place, time and manner) set forth on the face of this Order. The related expenses and risks shall pass to Buyer only upon delivery of the goods to Buyer's designated destination. TIME IS OF THE ESSENCE WITH RESPECT TO VENDOR'S OBLIGATIONS HEREUNDER. In the event of non-conformity, Buyer has the right to request immediate replacement or repair of the non-conforming products or services at Vendor's sole expense (including, but not limited to, packaging, repackaging and shipping of the non-conforming and the replacement product), in addition to any other remedy available at law.

2. **Invoices.** All Vendor invoices shall be in a format reasonably acceptable to Buyer, describing the services and/or products which have been supplied. Buyer prefers that invoices be sent electronically to: ap@totalsafety.com. In the alternative invoices may be sent to: Total Safety U.S., Inc., 11111 Wilcrest Green Drive, Suite 300, Houston, Texas 77042 Attn: Accounts Payable. All invoices are subject to verification. Payment of any invoice does not constitute inspection of products or services and shall not operate as a waiver of Buyer's rights under these terms and conditions. Payment shall be made within forty-five (45) days of receipt of invoice. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Vendor against any amount payable by Buyer to Vendor.

3. **Term and Termination.** Either party may terminate any Order for cause by notice in writing if: (a) the other party commits any material breach and does not take all necessary and reasonable steps to cure the breach within ten (10) days of written notice of default; (b) the other party seeks relief, or its creditors bring action against it or its direct or indirect parent, under any bankruptcy or insolvency law; (c) the other party makes an assignment for the benefit of creditors or other arrangement or composition under a law which prevents enforcement or collection of debts in full; (d)

the other party or its parent becomes insolvent or is otherwise unable to pay its debts as they come due in the ordinary course of business; (e) the other party or its parent ceases or suspends operation of its business; or (f) the other party or its parent is a party to a merger, acquisition, or sale as a consequence of which substantially all of its business or any portion of its business relating to the performance of the products is transferred. Buyer further reserves the right to terminate this Order for any reason in whole or in part for convenience upon written notice to Vendor, in which event Vendor will be entitled only to reasonable termination charges consisting of actual direct costs resulting from termination. If this Order is terminated for any reason, any section of these terms and conditions which by its terms is intended to survive termination shall survive termination and shall remain in full force and effect.

4. **Taxes.** Buyer shall be responsible only for taxes which under applicable statutes Buyer is required to pay. All other taxes shall be paid by Vendor.

5. **Warranties.** Vendor represents that all services shall be carried out diligently, efficiently, in a safe and workmanlike manner according to the standards and specifications contained in this Order and generally with the best practice applicable in the industry. Vendor represents and warrants that it (a) it has good and merchantable title to the products free and clear of any liens, restrictions, encumbrances or security interests; (b) the products shall conform to the description and applicable specifications provided to Buyer; (c) the products are consistent with any samples, models, designs or other requirements provided by Buyer; (d) the products are new, free from any defects in design, materials or workmanship, and fit for their intended purpose; and (e) shall not infringe any patent, trademark or copyright. The warranty period shall be one (1) year from date of delivery. If, during the warranty period, the services or products or any portion thereof fail to conform to the requirements of this Order, or are otherwise found to be defective, excluding normal wear and tear, then, such non-conforming or defective services or products shall be promptly re-performed or replaced at Vendor's sole cost and expense. Any products replaced or services re-performed hereunder shall have the warranties herein provided for the longer of (i) the remainder of the original warranty period or (ii) one (1) year from the date of delivery of the replaced conforming products or re-performance of the defective services, as applicable. The warranties set forth herein shall not affect or limit any of Buyer's other rights or remedies provided by applicable law, and shall not be deemed to establish a period of limitation or prescription within which such other rights or remedies must be asserted. All warranties will run to Buyer, its customers and subsequent owners of the goods or services (as applicable) to which they relate. There are no exclusions, limitations or disclaimers of

warranty other than those that may be expressly recited in this Order.

6. Indemnification. **VENDOR SHALL, TO THE EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND, AND HOLD HARMLESS BUYER, ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CUSTOMERS AND AGENTS, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, COMPLAINTS OR ACTIONS OF THIRD PARTIES (INCLUDING EMPLOYEES OF THE PARTIES OR GOVERNMENT AGENCIES) ARISING FROM OR RELATING TO: (a) THE SERVICES (INCLUDING PERSONAL INJURY, DEATH, PROPERTY DAMAGE OR DAMAGE TO THE ENVIRONMENT) TO THE EXTENT CAUSED OR ARISING OUT OF THE NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF THESE TERMS AND CONDITIONS, OR VIOLATION OF LAW OF OR BY THE VENDOR, (b) ANY DEFECTIVE PRODUCT OR (c) THE INFRINGEMENT OF ANY THIRD PARTY PROPRIETARY RIGHTS WITH RESPECT TO SERVICES PERFORMED OR GOODS SUPPLIED BY VENDOR. SUCH INDEMNITY SHALL BE WITHOUT REGARD TO THE NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR JOINT) OF BUYER. THE CLAIMS, DEMANDS, COMPLAINTS, AND ACTIONS COVERED HEREUNDER INCLUDE ALL SETTLEMENTS, LOSSES, LIABILITIES, JUDGMENTS, COURT COSTS, REASONABLE ATTORNEY'S FEES, FINES, PENALTIES AND OTHER LITIGATION COSTS AND EXPENSES ARISING FROM OR RELATED TO SUCH CLAIMS, DEMANDS, COMPLAINTS OR ACTIONS.**

7. No Consequential Damages. **IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR, AND EACH PARTY RELEASES THE OTHER FROM, ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY.**

8. Insurance. Vendor shall maintain at all times and supply Buyer with written proof of the following limits of coverages, in the form of a Certificate of insurance issued to Buyer by Vendor's Insurer's authorized agent: (a) General Liability \$3 million/each occurrence/\$3 million general aggregate/\$2M products completed operations Aggregate; (b) Statutory Workers Compensation (c) Employers Liability \$500,000 per disease and per occurrence (c) Auto Liability \$500,000 per occurrence limit. All the above insurance shall include coverage for contractual obligations as respects this Purchase Order and proper coverage for all other obligations or liabilities assumed in this Purchase Order. The certificate shall state that Buyer will receive thirty days notice prior to any material change in or cancellation of the policies. All insurance required in paragraph 7 above shall be primary and noncontributory respects to any other coverage obtained by

the Buyer. With the exception of Workers Compensation coverage, the insurance policies and certificate of insurance will be endorsed to name Buyer, its subsidiaries, affiliates, Directors and Officers, employees, and borrowed servants as an additional insured to the extent of the obligations and liabilities assumed by the Vendor. Each policy of insurance required by this Purchase Order shall include a waiver of subrogation endorsement in favor of the Buyer, its subsidiaries, affiliates, Directors and Officers, employees, and borrowed servants to the extent of the obligations and liabilities assumed by Vendor under this Purchase Order.

9. Independent Contractor. These terms and conditions shall not constitute or be deemed to create any relationship of principal and agent; partnership; or joint venture between the parties, it being expressly understood that the relationship between Buyer and Vendor is that of independent contracting parties only. Except as expressly set forth herein, neither party assumes any liability for the other party. Vendor is an independent contractor with respect to Buyer.

10. No Assignment. Vendor shall not transfer or assign this Agreement, in whole or in part, without the written consent of Buyer. Any attempt by Vendor to transfer or assign this Agreement, in whole or in part, without Buyer's consent, shall be void and of no force or effect. The assignment of this Agreement or the subcontracting of any Work to be performed hereunder shall not relieve Vendor of its obligations hereunder. Buyer may transfer and assign this Agreement, in whole or in part, at any time without the consent of Vendor.

11. Compliance with Law. Services shall be performed, and products shall be provided, in compliance with all applicable laws, orders, rules, and regulations of any governmental body or agency having jurisdiction over the performance of Vendor or the products to be provided. Vendor shall obtain all applicable approvals of any government agency whose authorization or approval is required for the products.

12. Export/Import. Vendor agrees to comply with all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the jurisdictions in which the Vendor and Buyer are established or from which items may be supplied.

13. Attorney's Fees. In any action or proceeding brought in connection with this Order, the prevailing party shall be entitled to recover its court costs and reasonable attorney's fees.

14. Entire Agreement. This Order, and any exhibits or attachments added hereto, constitute the entire agreement between Buyer and Vendor with respect to the purchase and sale of goods or services (as applicable), and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of this Order.

15. Amendment. This Order shall not be amended except in a writing signed by both parties.

16. Waiver. Except as otherwise set forth herein, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order will

operate or be construed as a waiver thereof. Waiver by either Party of any default of the other will not operate to excuse the defaulting party from further compliance with this Agreement, nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Governing Law, Venue and Jurisdiction.

This Order shall be governed by and construed in accordance with the laws of the State of Louisiana applicable to contracts made and to be performed therein, exclusive of the choice of law or conflict of laws provisions thereof. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this order may be brought against any of the parties in the courts of the State of Louisiana, Parish of Lafayette, or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of Louisiana, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

18. Special Provisions for Louisiana.

a. For operations to which Louisiana law may apply, and notwithstanding any other provision of this Order, Vendor shall have Buyer added as a named additional insured pursuant to an endorsement on all policies required in Section 8 of this Order, with the full cost of adding the Buyer as a named additional insured to be borne by Buyer. No material portion of this cost shall be borne by Vendor, and the costs, thereof to be paid by Buyer shall be in addition to the fees or other charges payable by Buyer under this Order, and shall not be consideration to Vendor. It shall be the sole responsibility of Vendor to ensure that Buyer is timely invoiced for full premium costs in respect of adding the Buyer as an Additional Insured on Vendor's policies. It shall further be the sole responsibility of Vendor and/or its brokers, agents or underwriters to calculate the additional premiums owed to add Buyer as an Additional Insured; to warrant that the additional premiums owed reflect the full cost of adding the Buyer as an Additional Insured; and to further warrant that no material portion of the cost of adding the Buyer as an Additional Insured is being borne by Vendor. Buyer shall have the right, should it desire, but not the duty, to contact Vendor's brokers, agents or underwriters concerning these matters. Vendor agrees to fully cooperate with Buyer in its dealings with Vendor's brokers, agents or underwriters, and will ensure and obtain the full cooperation of its brokers, agents and underwriters with Buyer.

b. Notwithstanding the parties' selection of the governing law in Section 16, in all cases where Vendor's employees (defined to include Vendor's direct, borrowed, special or statutory employees) are performing work in or offshore the State of Louisiana or are otherwise covered by the Louisiana Workers' Compensation Act, La. R.S. 23:1021, et seq., Buyer and Vendor agree that all Work performed by Vendor and its employees pursuant to this Agreement are an integral part of and are essential to the ability of Buyer to generate Buyer's goods, products and services for the purpose of La. R.S. 23:1061(A)(1). Furthermore, Buyer and Vendor agree that Buyer is the principal or statutory employer of Vendor's employees for purposes of La. R.S.

23:1061(A)(3) and that Buyer shall be entitled to the protection afforded a statutory employer under Louisiana law. Irrespective of Company's status as the statutory employer or special employer (as defined in La. R.S. 23:1031(C)) of Vendor's employees, Vendor shall remain primarily responsible for the payment of Louisiana Workers' Compensation and medical benefits to its employees, and shall not be entitled to seek contribution for any such payments from Buyer. Vendor further agrees that it will indemnify Buyer for any such payments.